

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARCY FAY SZYMCHACK,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:18-cv-1223

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court affirm the Commissioner's decision to deny Plaintiff's claim for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) Benefits. The matter is presently before the Court on Plaintiff's two objections to the Report and Recommendation, to which Defendant filed a response. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff's first objection concerns Listing 1.04 for disorders of the spine. Plaintiff argues that "[t]he Magistrate's analysis of Plaintiff's Listing argument was bereft of an actual discussion of whether the ALJ's step three determination was supported by substantial evidence and improper" (Objs., ECF No. 15 at PageID.616). Plaintiff's argument lacks merit. As Defendant points out, the Magistrate Judge "accurately marshals a subset of the substantial evidence that

supports the ALJ's finding that Plaintiff's spinal impairment did not meet or equal Listing 1.04A" (Resp., ECF No. 16 at PageID.623, citing R&R, ECF No. 14 at PageID.610). Plaintiff's first objection is therefore properly denied.

Plaintiff's second objection concerns her residual functional capacity (RFC). Plaintiff argues that "the Magistrate's discussion of this argument does not amount to a meaningful review as there is only a cursory statement that there were no improper or incomplete questions to the Vocational Expert" (Objs., ECF No. 15 at PageID.617). Plaintiff opines that "[i]t does not follow that Vocational Expert testimony is complete when there are no questions pertaining to sustained looking down, turning her head right or left, looking up, or holding her head in static position when someone has severe cervical spine abnormalities" (*id.*). However, as Defendant points out (Resp., ECF No. 16 at PageID.623-624), the disputed limitations are taken verbatim from the opinion of Physician's Assistant Todd Kreykes, which the ALJ discounted for several reasons. While Plaintiff challenged the ALJ's decision to discount Kreykes' opinion, Plaintiff has not challenged the Magistrate Judge's determination that "the ALJ articulated good reasons, supported by substantial evidence, for discounting PA Kreykes' opinion" (R&R, ECF No. 14 at PageID.612). Therefore, Plaintiff's second objection is also properly denied. Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 15) are DENIED, the Report and Recommendation of the Magistrate Judge (ECF No. 14) is APPROVED and ADOPTED as the Opinion of the Court, and the decision of the Commissioner of Social Security is AFFIRMED.

A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.

Dated: November 4, 2019

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge